

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4817 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VEPAR VIKAS CO-OP BANK LTD

Versus

GHANSHYAM LALLUBHAI PATEL

Appearance:

MR NIRAV MAJMUDAR for Petitioner
MR DS VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 28/07/2000

ORAL JUDGEMENT

This matter was placed for hearing before me prior to vacation. However, learned advocate for the petitioner requested the Court to adjourn the matter on the ground that the matter is likely to be settled. With a view to see that if there is amicable settlement,

though the matter was old one, the Court granted time, but today, when the matter is called out, the Court is informed that till today, there is no settlement and, therefore, the Court has to dispose of the matter on merits.

2. Mr. Nirav Majmudar, learned advocate appearing for the petitioner argued this matter at length. He submitted that the Labour Court, while examining the matter under section 33 (C)(2) of the Industrial Disputes Act (hereinafter referred to as the Act) has exceeded its limit. He further submitted that the Labour Court accepted the demand which was objected by the petitioner Bank. However, on a specific question being put by the Court, Mr. Majmudar had to say very frankly that before the Labour Court, the Bank has neither taken any specific plea nor produced any material in support of the contentions.

3. The respondent was an employee of the petitioner Bank. The respondent filed an application before the Labour Court being B.I.R. No. 428/77 challenging the action of the petitioner Bank in relieving him from service w.e.f. 30.7.1988 after giving one month's salary. The Labour Court rejected the application. Aggreived, respondent filed an appeal before the Industrial Court being No. I.C. No.61/81. The Industrial Court directed the petitioner Bank to pay full pay from 30.7.1977 to 12.10.1981 after deducting the notice pay given to the respondent herein. As the said order was not complied with, the respondent moved a contempt petition before this High Court, and it appears that the petitioner herein arrived at a settlement with the respondent. The petitioner agreed to pay 72% of the pay for the period from 30.07.1977 to 12.10.1981 and the respondent agreed to accept the same. Accordingly, the petitioner paid a sum of Rs.13,000/- to the respondent. However, the respondent filed Recovery Application No. 613/84 before the Labour Cour, Vadodara contending that as per his calculation an amount of Rs.24,221/- is due to him as he was entitled to get not only pay, but also benefits such as privilege leave, casual leave, sick leave, national holidays, bonus, house rent allowance and medical allowance. The Presiding Officer, after hearing the parties, by order dated 2.5.1987 directed the petitioner to pay an additional amount of Rs.11,000/and also cost of Rs.100/-. The present proceedings are initiated by the Bank against the aforesaid order dated 2.5.1987 passed by the Presiding Officer of the Labour Court, Vadodara.

4. It is contended before this Court that the respondent employee is not entitled to any difference in salary. According to the petitioner Bank, whatever the salary was required to be paid on 30.7.1977 was required to be taken into consideration till 12.10.1981. According to the employer, even if there was rise in pay, the employee would not get the said benefit. This contention raised by the petitioner is required to be rejected. If the petitioner was of the view that a particular amount is required to be paid, then at that time, instead of stating 72% of the wages, it ought to have stated a particular sum. If that would have been made clear before the Court hearing the contempt application, then possibly there would have been no occasion for the respondent employee to make a grievance before the Labour Court. It is known in the labour field that unless and until it is specified, wages would include other benefits also.

5. A Division Bench of this Court, in the case of BIPINCHANDRA vs. NAVIN FLOURINE INDU. reported in 22 GLR 1070 considered this aspect and clarified as under in paragraph 5:

"We may make it clear that back-wages will include all the payments to which a permanent employee would be entitled to, such as dearness allowance, increments, bonus etc. "

6. In the circumstances, it was for the petitioner Bank, to specifically state at the relevant time in the compromise purshis as to what it intends to pay. If the Bank would have specifically stated pay only and nothing else, the respondent may not have agreed to the compromise. In the absence of any clear terms, wages would include other benefits also.

7. It is also required to be noted at this juncture that the matter is covered under the Bombay Industrial Relations Act, 1946. The provisions contained in sub-section 39 of Section 3 defines wages as under:-

' "Wages" means remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes-

- (i) any bonus, allowances (including dearness allowance), reward or additional remuneration;
- (ii) the value of any house accommodation,

- light, water, medical attendance or other amenity or service'
- (iii) any contribution by the employer to any pension or provident fund;
 - (iv) any travelling allowance or the value of any travelling concession;
 - (v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment;
 - (vi) gratuity payable, if any. '

Thus, the contention raised by Mr. Majmudar, in view of the specific provision, cannot be accepted.

8. In the instant case, the Labour Court disposed of the application made under section 33 (C)(2) of the Act; There is no jurisdictional error or procedural error apparent on the face of the record. Therefore, the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution being limited to seeing that an inferior court or Tribunal acts within the limit and not to correct an error apparent on the face of the record much less an error of law, the Court would not be entitled to entertain the petition as canvassed by learned advocate Mr. Majmudar. The Apex Court in the case of MOHD. YUNUS vs. MOHD. MUSTAQUIM reported in AIR 1984 SC 38 held as under:

" A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal

purports to be based or to correct errors of law in the decision."

9. Mr. Vasavada, learned advocate submitted that the petitioner, by filing this petition withheld payment of the amount which otherwise the respondent was entitled to receive. He further submitted that the respondent employee would have earned interest on the amount which was withheld by the Bank. If the amount would have been paid to the respondent at the relevant, the question would have been different but as the respondent has been denied the benefit of the order, I see much force in the request made by Mr. Vasavada claiming interest on the amount retained by the Bank.

10. Under the circumstances, the petition is dismissed. The petitioner is directed to pay amount of Rs.11,000/- plus Rs.100/- to the respondent with 9% interest from 2.5.1987 till date of payment; The said amount shall be paid within a period of four weeks from today.

11. Rule is discharged. Interim relief stands vacated. No order as to costs.

(B.C. PATEL, J.)

csm./